

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOANN MASSER and U.S. POSTAL SERVICE,
BULK MAIL CENTER, Jersey City, NJ

*Docket No. 99-25; Submitted on the Record;
Issued March 21, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issues are: (1) whether appellant met her burden to establish that her current condition or disability of the left knee was caused or aggravated by her accepted February 26, 1994 left knee injury; and (2) whether the Office of Workers' Compensation Programs properly found that appellant had abandoned her request for a hearing before an Office hearing representative.

On February 26, 1994 appellant, a 30-year-old clerk, injured her left knee when she slipped and fell on an icy stairwell. She filed a Form CA-1 claim on the date of injury, which the Office ultimately accepted for left knee strain. The Office paid appellant compensation for appropriate periods.

On November 23, 1996 appellant filed a CA-2 claim for recurrence of disability, alleging that her current condition or disability of the left knee was caused or aggravated by her accepted February 26, 1994 left knee injury.

By letter dated December 5, 1996, the Office advised appellant that it required additional medical evidence, including a comprehensive medical report, to support her claim that her current condition or disability was causally related to her accepted February 26, 1994 employment injury. The Office also requested that appellant submit a factual statement explaining the circumstances of her alleged recurrence. The Office stated that appellant had 30 days in which to submit the requested information.

In response, appellant submitted a January 30, 1997 report from Dr. Leonard Jaffe, a specialist in orthopedic surgery and her treating physician, who stated that she still had pain in her left knee.

By decision dated December 20, 1997, the Office denied appellant's claim for recurrence of disability, finding that she failed to submit rationalized medical evidence sufficient to

establish that the claimed condition or disability was caused or aggravated by the accepted February 26, 1994 employment injury.

By letter to the Office dated January 12, 1998, appellant requested an oral hearing.

In a June 3, 1998 letter, the Office informed appellant that a hearing would be held on June 25, 1998.

In an August 25, 1998 decision, the Office found that appellant abandoned her request for a hearing, as she failed to appear at the time and place set for the hearing and did not show good cause for her failure to appear within 10-calendar days after the time set for the hearing.

The Board finds that appellant has not established that her current condition or disability of the left knee was caused or aggravated by the February 26, 1994 employment injury.

An individual who claims a recurrence of disability resulting from an accepted employment injury has the burden of establishing that the disability is related to the accepted injury. This burden requires furnishing medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to the employment injury and who supports that conclusion with sound medical reasoning.¹

The record contains no such medical opinion. Indeed, appellant has failed to submit any medical opinion containing a rationalized, probative report which relates her current condition or disability to her February 26, 1994 employment injury. For this reason, she has not discharged her burden of proof to establish her claim that she sustained a recurrence of disability as a result of her accepted employment injury.

The only new and relevant medical evidence appellant submitted was Dr. Jaffe's January 30, 1997 report, in which he summarily noted that appellant still had pain in her left knee and did not express an opinion as to whether this pain was causally related to the February 26, 1994 employment injury. As his summary report was the only evidence appellant submitted in support of her claim for a recurrence of disability, appellant failed to provide a rationalized, probative medical opinion indicating that her current condition was caused or aggravated by the accepted February 26, 1994 employment injury.²

As there is no medical evidence addressing and explaining why the claimed condition and disability was caused or aggravated by her February 26, 1994 employment injury, appellant has not met her burden of proof in establishing that she sustained a recurrence of disability.

The Board finds that the Office properly found that appellant had abandoned the request for a hearing.

¹ *Dennis E. Twardzik*, 34 ECAB 536 (1983); *Max Grossman*, 8 ECAB 508 (1956); 20 C.F.R. § 10.121(a).

² *William C. Thomas*, 45 ECAB 591 (1994).

Section 8124(b) of the Federal Employees' Compensation Act³ provides claimants under the Act a right to a hearing if they request a hearing within 30 days of the Office's decision. Pursuant to section 10.137 of the applicable regulations,⁴ a scheduled hearing may be postponed upon written request of a claimant or her representative if the request is received by the Office at least three days prior to the scheduled date of the hearing and good cause for the postponement is shown. If a claimant fails to appear for a scheduled hearing, she has 10 days after the date of the scheduled hearing to request that another hearing be scheduled. Where good cause for the failure is shown, a second hearing will be scheduled.

In the instant case, appellant failed to appear at the scheduled hearing on June 25, 1998, did not attempt to provide appropriate notice that she would not attend and made no attempt to postpone the hearing date. Further, she failed to show good cause within 10 days of the scheduled hearing date as to why she failed to appear. Based on these facts, therefore, the Office properly concluded under section 10.137 that appellant's request for a hearing was abandoned.

Appellant asserted to the Board that she informed the Office she would be unable to attend the June 3, 1998 hearing because she was planning to be out of the state. She, however, has provided no factual support for this assertion. Further, the Board's jurisdiction to decide appeals from final decisions of the Office is limited to reviewing the evidence that was before the Office at the time of its final decision.⁵ The Office's finding of abandonment was proper under the circumstances of this case.⁶

³ 5 U.S.C. § 8124.

⁴ 20 C.F.R. § 10.137.

⁵ 20 C.F.R. § 501.2(c). Appellant may submit such argument and any supporting evidence in a request for review to the Office pursuant to 5 U.S.C. § 8128.

⁶ *Mike C. Geffre*, 44 ECAB 942 (1993).

The August 25, 1998 and December 20, 1997 decisions of the Office of Workers' Compensation Programs are therefore affirmed.

Dated, Washington, D.C.
March 21, 2000

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member